KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE
(202) 955-9792

DIRECT LINE (202) 955-9608
E-MAIL: saugustino@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
MIAMI, FL
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

ORIGINAL

EX PARTE OR LATE FILED

September 1, 1999

VIA COURIER

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: UNE Remand Proceeding,
CC Docket No. 96-98

Dear Ms. Salas:

The attached letter from Carol Ann Bischoff, Executive Vice President and General Counsel, CompTel, was sent via facsimile yesterday to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC. In accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), two copies of the letter are provided for inclusion in the record in this proceeding.

DC01/AUGUS/90582.1

If you have any questions, please contact the undersigned.

Sincerely,

Steven A. Augustino

SAA:pab

Enclosures

cc: Larry Strickling

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

ADVANCING GLOBAL COMMUNICATIONS THROUGH COMPETITION

1900 M STREET, NW, SUITE 800
WASHINGTON, DC 20036-3508
PH: 202.296.6650
FX: 202.296.7585
www.comptel.org

CompTel

August 31, 1999

Via Facsimile

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Written *Ex Parte* Presentation by the
Competitive Telecommunications Association

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (UNE Remand) – CC Docket 96-98

Dear Mr. Strickling:

On Friday, August 26th, the Commission Staff convened a discussion between industry representatives – including the Competitive Telecommunications Association ("CompTel") -- concerning whether a loop/transport configuration commonly referred to as "extended link" (EEL) should be offered without restriction as an unbundled network element (UNE). Given the critical importance of the EEL configuration to the competitive industry, this *ex parte* summarizes CompTel's key objections and further responds to the claims raised by the incumbent local exchange carriers.

CompTel's interest in the extended link issue arises from its representation of an emerging class of competitive carriers, the "integrated communications provider" (ICP). These carriers expect to compete in the future by offering a wide range of services and packages without regard to pre-1996 Act distinctions such as "local," "long distance," and "exchange access." An ICP seeks to provide whatever services the customer needs, in whatever arrangement it believes is most useful to the customer. This often will lead to a service package that does not easily fit in one (or more) of the traditional categories or may not include every element of traditional services. A "boundary-free" ICP market, however, will only be possible if entrants are free to use UNE facilities without *any* restriction as to the services that will be offered. In particular, restrictions that strive to perpetuate preconceived boundaries drawn on today's industry model cannot be tolerated. Innovation would be frustrated by any environment where ILEC-imposed restrictions require that entrants conform services to conventional definitions and perceptions before they may access the network elements they require to offer their services. It is simply impossible to prejudge which arrangements, and which competitive strategies, are best suited for a particular market or carrier.

In an effort to justify restrictions on the use of the extended link, the ILECs make two basic arguments. First, the ILECs claim that special access services support universal service and that an unrestricted EEL would erode this support. Building from this presumptive tie to universal service, the ILECs assert there is a valid governmental role to assure that existing rate levels are protected from competition. Second, the ILECs claim that placing restrictions on the EEL would promote more local competition by encouraging facilities construction. Although not a justification for restricting the EEL, the ILECs also claim that an EEL restriction could be "easily" implemented and enforced[1] – even though, as the industry discussion before the Commission plainly demonstrated, no single restriction could be easily defined.[2]

Significantly, however, none of these claims can be justified by the facts. There is *no* evidence that universal service concerns have played *any* role in special access pricing. To the extent that special access prices produce supra-competitive profits, these profits promote the ILECs' commercial interest and not the public interest. Protecting the ILECs' special access revenues simply is not a legitimate governmental policy in and of itself. Nor is there any reason to expect an EEL to materially change conventional network investment decisions. To the contrary, an EEL network element would foster network development by accelerating entry, improving network efficiency and expanding the effective "footprint" of competitive networks. Further, by conserving scarce central office collocation space, an unrestricted EEL could actually promote the deployment of the advanced data services that depend upon such space to compete.

As to the *implementation* of any restriction, CompTel explains that adopting any such approach would simply add another litigation point to an already contentious process. Each and every new service -- as well as the status of existing services[3] -- would be forced through a "compliance gauntlet" of increasing complexity and dispute. The increased uncertainty and

---

1 For instance, although it was claimed that a restriction could be implemented through "self-certification," this suggestion was immediately modified with the observation that "some auditing" may be necessary.

2 Despite repeated attempts to clarify the scope of the restriction being proposed by the ILECs, it was clear no such "detail" would be forthcoming.

3 For instance, the ILECs frequently refer to "special access" as though these circuits are all used consistently by carriers and customers in some predictable manner and that, therefore, a restriction that applies to "special access" would have some consistent meaning and effect. The fact of the matter, however, is that "special access" refers to a broad category of transmission arrangements that are used to provide a variety of services, including local services, local area networks, and data services, as well as connections to long distance networks. The only thing that all special access circuits have in common is that they coexist in the same ILEC tariff, and carriers have ordered capacity from these tariffs (as opposed to UNEs) because there were established procedures to have it provisioned. There is not, however, a single common use of "special access" that corresponds to the restrictions that the ILECs themselves have proposed (such as a requirement that a UNE be used to provide "local service").

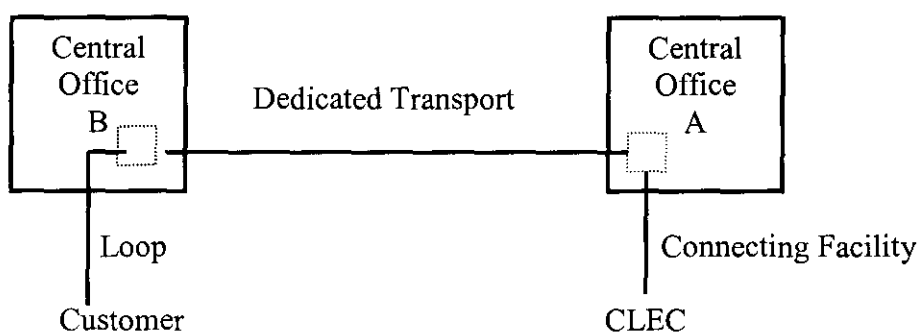
resulting costs would overhang the market, discourage innovation, and slow the introduction of new services. Further, the Commission would confront an inevitable "restriction creep" as the ILECs would seek to expand any restriction to protect even more revenues from competition. Indeed, as CompTel explains below, this "restriction creep" has already begun. The ILECs are no longer proposing to restrict only the EEL network element to protect universal service support; rather, they are effectively requesting a far *broader* restriction on all dedicated network elements (loops and transport) so as to protect *all* special access revenues.

As a final point, it is important to realize that the ILECs themselves are positioning to become "integrated service providers" as soon as they obtain interLATA authority in accordance with Section 271. Once this legal authority is granted, the ILECs will have full and unrestricted access to each of these network facilities, with the freedom to offer whatever service package they desire. None of the artificial restrictions (or inflated prices) that they seek to impose on competitors will similarly effect them. Although CompTel objects to any policy that would restrict the EEL UNE, under no circumstance may a restriction continue in a state where an RBOC has been granted Section 271 authority.[4]

A Common Understanding of Extended Link

Any discussion of a particular policy must first begin with an understanding of the precise "policy" that is under consideration. Once a common understanding of the policy is achieved, then evaluating its effect simply requires a comparative analysis of how conditions have changed. Figure 1 (below) illustrates CompTel's understanding of the basic network choices affected by the introduction of a mandatory EEL UNE:

Figure 1: Extended Link



[4] As a legal matter, CompTel does not believe that the Commission could approve a Section 271 application if an EEL restriction is in place because such an RBOC would not be providing "nondiscriminatory access to network elements in accordance with Sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(ii).

In clear and simple terms, the purpose of the EEL UNE is to enable a CLEC that is connected with Central Office A to provide services to customers in Central Office B. *In the absence of the EEL UNE*, a CLEC could purchase a loop UNE in Central Office A, a loop UNE in Central Office B, and the dedicated transport UNE between these offices, all *without* any restriction limiting the services that could be used by these facilities. To use these UNEs, however, the CLEC would need to collocate cross-connect and/or multiplexing equipment in both central offices to interconnect these individual UNE components. On the other hand, the principal advantage of an EEL UNE is that it would establish a comparable serving arrangement without the entrant being forced to collocate the cross-connect/multiplexing equipment to interconnect these facilities.

As Figure 1 shows, the issues raised by a new EEL UNE are quite small – the only *additional* revenues placed at risk by an EEL (in the long run) would be the revenues that the ILEC would have received for the collocation arrangements that an EEL makes unnecessary. Given that the ILECs' rates for collocation arrangements should be cost-based, however, the potential for "lost" collocation revenues should never provide a justification for restricting the uses of a EEL UNE.

Furthermore, Figure 1 illustrates that the availability of a EEL UNE would have little long term effect on a CLEC's investment decision to construct network facilities to Central Office B (or even to the customer itself). As explained above, the only *long* term cost change resulting from the EEL option is the savings in collocation costs at the distant (and perhaps near) end-office.[5] Assuming that the Commission's cageless collocation order is implemented properly, however, these long term savings should be relatively small and, as a result, have little impact on the basic investment calculus involved.

The fundamental conclusion here is that the EEL UNE *alone* raises few unique issues and presents little risk to the ILECs' revenues. It is apparent, however, that the ILECs are using the *opportunity* presented by industry's request for an EEL UNE to launch a broad assault on the use of dedicated UNEs more generally (*e.g.*, loops and transport) to provide competitive alternatives to special access service. As shown below, this "threat" is both exaggerated and unjustified by universal service concerns.

---

[5] In the short term, however, the EEL promises to accelerate entry by providing carriers a cost effective means to expand their footprint, offering services to more customers and extending services to central offices where aggregate demand would not otherwise justify network expansion. It is important to emphasize that investment decisions consider *long term* benefits and costs. Thus, while the EEL's short term benefits can be expected to accelerate competition, these short term effects should have little direct effect on investment choices.

The ILEC Reliance on Universal Service is Unfounded

The ILECs' entire case begins with the proposition that there is a valid government interest in protecting their special access revenues. However, as has been demonstrated by CompTel and others in this docket,[6] use-based restrictions on UNEs are unlawful. Section 251(c)(3) unambiguously grants *any* requesting carrier the ability to obtain network elements in order to "provide any telecommunications service," including access services. Nothing in Section 251(c)(3) permits the ILECs to condition access to the UNE based upon the use the requesting carrier intends; indeed, Section 51.309(a) of the Commission's rules prohibits ILECs from imposing restrictions on requesting carriers' use of network elements. 47 U.S.C. § 51.309(a).

In an effort to provide a policy justification for protecting these revenues from competition, the ILECs seek to link their special access prices to the social goal of universal service.[7] Aside from the bald assertion that such prices have been driven by such considerations, however, the ILECs have provided no evidence that anything other than their own commercial self-interest is at stake in their special access pricing policies.

To begin, the Commission has *never* prescribed specific rate elements for special access services.[8] The ILECs have always enjoyed considerable flexibility in determining the pricing of individual products and services, provided an overall revenue requirement was met. Ostensibly, this flexibility was provided to enable ILECs to *lower* rates to cost in response to "competitive pressures." For instance, as long ago as 1989, the ILECs were clearly justifying special access prices based on cost and commercial considerations:

> ...A number of parties allege BellSouth has employed strategic pricing for its high capacity services without complying with the strategic pricing guidelines.
>
> Such allegations are inexplicable. In Volume 1 of supporting documentation it was explicitly stated "that BellSouth has established cost-based rates in this filing for high capacity services...."[9]

***

---

6 *See,* Letter from Carol Ann Bischoff, CompTel, to Larry Strickling, FCC, August 10, 1999 ("CompTel August 10 *ex parte*" (explaining the Five Pro-Competitive Principles for UNE Entry)).

7 *See, e.g., Ex Parte* of BellSouth to Larry Strickling, August 9, 1999.

8 *Access Charge Reform,* Fifth Report and Order, Further Notice of Proposed Rulemaking, FCC 99-206, ¶ 8, CC Docket No. 96-262 et al. (rel. August 27, 1999) (*Access Reform Fifth Order).*

9 BellSouth Reply, Annual 1989 Access Tariff Filing, Transmittal No. 225, page 5.

> In 1988, Southwestern Bell's strategically priced rates were based on the prices of competitive alternatives rather than any strategic purpose.[10]
>
> ***
>
> Independently, [US WEST's] Target [Special Access] Rates are not strategically priced because no factors other than cost have been used to build these rates.[11]
>
> ***
>
> NYNEX asserts that its proposed DS3 rate structure is justified by competitive necessity.[12]

Most recently, the Commission granted the ILECs additional pricing flexibility to reduce prices as the ILEC faces increased competition.[13] However, if special access services *were* truly competitive, any above-cost universal service support would not be sustainable. Thus, the ILECs' arguments in support of pricing flexibility are internally inconsistent with their claims here.

Compounding the ILECs' logical inconsistency is the fact that the FCC has examined – but rejected – claims that special access rates include universal service support flows. In the *Expanded Interconnection* proceeding, the Commission concluded that any "contribution" in special access rates "should be targeted to recover only specifically identified regulatory support mechanisms or non-cost-based allocations" that are embedded in ILEC special access rates.[14] The Commission examined the ILECs' claims that special access rates were artificially inflated, but expressly did not include a contribution charge in ILEC expanded interconnection tariffs because it identified and *removed* the only support flow that its investigation found:

> Based on the present record, the only significant non-cost-based support flow imposed by our regulations affecting special access is the over-allocation of

---

10 Southwestern Reply at 37, cited in Memorandum Opinion and Order, DA 89-337, March 22, 1989, paragraph 503.

11 US WEST's Reply at 44, cited in Memorandum Opinion and Order, DA 89-337, March 22, 1989, footnote 536.

12 Memorandum Opinion and Order, DA 89-337, March 22, 1989, paragraph 505.

13 *Access Reform Fifth Order*, ¶¶ 67-70.

14 *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, ¶ 146 (1992), subsequent history omitted.

> General Support Facilities (GSF) costs to special access. . . . [W]e believe . . . it would be far more desirable to revise the Part 69 rules to allocate GSF costs proportionally to all services.[15]

Notably, even though the Commission expressly invited the ILECs to propose contribution charges in its 1992 *Expanded Interconnection Order*, in the seven years since this decision was issued, none have done so.[16] Similarly, the Commission's *Universal Service* Proceeding has not identified any implicit subsidies from the ILECs' special access services.

In sum, there is simply no evidence that interstate special access prices have been established to maximize any goal other than the ILECs' commercial dominance.[17]

"Restriction Creep" and the Myth of Simple Enforcement

As noted at the outset, CompTel's principal policy interest in this proceeding is assuring that its members have a full opportunity to access any and all network elements they require to fulfill their wide range of business strategies. Since the 1996 Act was first passed, CompTel has seen time and again that its members address this market though imagination and innovation, freed from the preconceptions of their incumbent competitors. This process can continue, however, *only* if entrants remain able to purchase and use network elements as *generic* capabilities, with total freedom to fully exploit the potential of such elements to offer any (and every) service possible.

Seen in this light, *any* restriction will constrain competition by forcing entrants to conform to whatever artificial limitation is imposed. In addition to the policy implications of the Commission's perpetuating industry boundaries in this way, very real practical issues also are raised by any such approach.

Notably, the first issue concerns the basic phenomena of "restriction creep." Should the Commission accede to the ILECs' request, it will forever contaminate the UNE framework, as this Commission (and then the States) are asked to consider *additional* restrictions and interpret

---

15 *Id.*, ¶¶ 147-48.

16 As paragraph 143 of the *Expanded Interconnection Order* concluded: "We will, however, permit the LECs to seek approval of a contribution charge based on other support flows."

17 Similarly, although the ILECs also claim that intrastate special access prices support universal service, none has offered any evidence that such is the case.

existing ones.[18] Every new service will be under a cloud, as ILECs argue that the service fits within the restricted category, while entrants just as predictably argue that it does not. Rather than devoting energy and investment to innovation and new networks, entrants will be forced to recover unnecessary litigation expense in the price of each new service.

Equally troubling is the view that a UNE-restriction can be easily enforced, without expensive auditing and other ramifications. For instance, it has been suggested that any restriction imposed on network elements could be easily enforced though "PLU" factors or self-certification.[19] This suggestion, however, ignores the industry's experience attempting to maintain artificial differences between interstate and intrastate access rates by relying on "PIU" reports to determine the jurisdictional nature of traffic that the ILEC could not measure directly. Just as these rate differentials beget PIU reports, the PIU reports begot auditing requirements, which required additional rules detailing record retention obligations, access to proprietary materials, etc.. This is not a model that should be repeated.

Finally, the above discussion ignores the core "definitional" issues that any restriction would raise. For instance, SBC's simplistic suggestion that UNEs may only be used if the "entrant provides the customer with local service" raised (at a minimum) the following unanswered questions:

- What is a "local" service? For instance, in Texas, customers can opt into different "local" calling areas by subscribing to optional metropolitan calling plans.

- May entrants designate their own "local" services?

---

[18] *See e.g.*, BellSouth has already requested that any loop/transport combination in Georgia be required to meet a number of restrictions, including:

- EEL would only be available in Rate Groups 2 and 5.
- EEL would expire in 2 years.
- EEL would only be available coincident with Section 271 relief.
- Customers must obtain service from BellSouth for 6 months before qualifying for
- an EEL.
- EEL must terminate to a local voice circuit switch.
- EEL must be used to provide local voice switched traffic only.
- EEL may not be used to displace special access.

Source: Exhibit JH-2, attached to Direct Testimony of Jerry Hendrix, Docket 100692-U, filed June 30, 1999.

[19] CompTel interprets these suggestions to imply that carriers could report a "percent local usage" (PLU) or certify that a facility is used predominantly (defined by some measure) to provide "acceptable" services.

- May more than one carrier provide "local" service to the same customer?
- Are data services "local"?
- Who would decide what constitutes a "local" service?
- On multi-circuit, multi-function facilities (such as a DS-1 or DS-3), is there a threshold amount of "local" traffic needed to qualify?
- How can an entrant determine if a DS-3 interoffice pipe is providing "local" service when it is used for multiple customers?

Moreover, the above list only scratches the surface of the types of issues that the suggested restriction would create. As indicated earlier, the Commission should remember that the ILEC will not be asking itself these questions as it decides what services it will offer – or, if it does, it can choose to believe and interpret its answer to best suit its purpose. Opening the door to restrictions on UNEs is a quagmire of unprecedented dimension that this Commission should avoid at the outset (and certainly sunset coincident with any Section 271 approval).

Restriction Creep and Claims of Financial Vulnerability

One consequence of "restriction creep" is its use to self-justify a restriction by inflating claims of financial harm. In the sad calculus of market protectionism, the following is always true: The broader the restriction being sought, the more exaggerated the potential revenue effect of denial. As explained at the outset, the "delta" effect on an EEL UNE itself is very modest, at least in the long term. If the issue were *only* the EEL UNE, the ILECs could not even *claim* a significant revenue exposure.

It is apparent, however, that the ILECs are using the opportunity presented by the Commission's consideration of the EEL to impose a far broader restriction that would apply to *any* dedicated arrangement that could be used to provide special access-like services. For instance, based on comments during Friday's *ex parte* visit, SBC apparently seeks a use restriction that would apply to each span in an entrant's serving configuration. Although CompTel believes that such a restriction is patently unlawful, our purpose here is to explain that the competitive exposure of special revenues is overstated, even *if* the issue being considered is a UNE use-restriction of the breadth sought by the incumbents.

Assuming that the ILECs are requesting a broad restriction on all dedicated UNEs to prevent entrants from substituting such facilities for special access, CompTel has estimated the potential revenue impact on the ILECs from two perspectives. First, CompTel has analyzed the relative differential between UNE and Special Access rates to determine the extent to which ILEC special access prices diverge from cost-based UNE rates. Second, CompTel has analyzed what portion of the ILECs' special access revenues are associated with services under long term

contract (or generated by non-recurring activities) that would not be immediately affected by competition.[20] The product of these analyses provides an *aggressive* estimate of the potential net revenue loss that could occur from the broader competition made possible by unrestricted access to the loop, transport and EEL network elements.

(a) Estimating the Differential Between Special Access and UNE Rates

To determine the relationship between ILEC special access rates and UNE rates, CompTel evaluated a basic EEL configuration comprised of 10 miles of DS-3 transport to a distant end-office, connected to a DS3/1 multiplexer to support connections to DS-1 customer loops.[21] Determining the appropriate special access price for a comparison to the UNE rates is complicated, however, by the pricing flexibility that the ILECs have used to offer multiple special access prices to the market. For purposes of this comparison, the CompTel analysis considers the *lowest* special access price that the ILECs offer, typically the result of a term discount for a zone 1 customer.[22] Because the ILECs are willing to accept these price levels (at least from those customers that fit their strategic objectives), it would be inappropriate to use any higher rates in determining the potential impact of competition. Table 1 provides the results of this comparison for one state in each of the RBOCs' regions. As Table 1 shows, UNE rates bear a relatively consistent relationship to the discounted special access prices that the RBOCs already offer selective customers,[23] with UNE rates being approximately 30% below their special access counterpart.

---

20 Non-recurring revenues are included in this analysis for two reasons. First, additional competition in the special access market is likely to increase non-recurring activities and revenues as carriers and customers reconfigure their services. Second, non-recurring charges should only recover the cost of the non-recurring event and, therefore, should have a neutral affect on the ILECs' revenues and cost.

21 Overall, CompTel expects that EEL arrangements are most likely to serve customers with larger bandwidth requirements, given the well-documented problems that entrants have experienced serving customers using conventional (lower capacity) loops.

22 As shown in Table 1, the most common variable used to discount special access pricing was term commitment. In California, SBC (previously Pacific Telesis) offers discounts based on total revenue commitments. To avoid controversy, these discounts were not included in the analysis, thereby inflating the differential between UNE and special access rates. In addition, SBC offers volume-based discounts in Texas that have been incorporated into the analysis.

23 It is useful to note that with respect to US WEST in Colorado, the discounted special access rates are actually *below* the UNE price of the network facilities used to provide a comparable arrangement.

Table 1: Comparing UNE Rates to Special Access

State	UNE Rates	Special Access (Zone 1)	Differential	Term (years)
New York	$1,335.52	$1,958.76	31.8%	7
Georgia	$1,657.37[24]	$2,554.00	35.1%	8
Texas	$875.25	$1,319.40	33.7%	10[25]
Michigan	$964.85	$1,467.44	34.2%	5
California	$780.67	$1,134.60	31.2%	NA
Colorado	$1,694.48	$860.00	-97.0%	10

Critically, the entire 30% differential shown in Table 1 should *not* be viewed as a potential revenue loss, for the following reason: UNE rates represent *only* the cost of the underlying transmission capability used to provide a finished service (such as, special access). In any market, including special access, some margin will exist between raw network cost and the price of a service. Consequently, at least some portion of the 30% differential shown in Table 1 would be sustainable even as the market becomes more competitive. To provide context, CompTel earlier reported on the projected SG&A (i.e., sales, general and administrative) margins expected by financial analysts for a survey of CLECs. This analysis indicated that average projected SG&A for CLECs in 2002 was estimated to be 42.4%, with a range of 30% to 61%.[26] Further, a typical estimate of the ILECs' avoided customer-support costs (i.e., the resale discount) is approximately 20%. Consequently, the ILECs' fundamental claim that special access prices deviate greatly from UNE prices is *not* true, at least when the ILECs' voluntary discount plans are considered.

(b) Estimating Special Access Revenues Under Contract Commitment

To determine what portion of an ILEC's special access revenues are even *addressable* by competitive alternatives, CompTel evaluated Bell Atlantic's annual price cap filing to determine the prevalence of contract-based term commitments.[27] The "high capacity" special access

---

[24] Georgia has not set rates for a DS-3 interoffice channel. The "cost-based" rate in Table 1 is estimated by converting the DS-1 UNE rate assuming a 75% fill rate.

[25] Texas has term and volume discounts. The special access rate is based on the maximum term (10 years) and volume commitment (12 DS-3 system).

[26] Comments of the Competitive Telecommunications Industry, at Appendix B, n.10, Docket CC No. 96-98 (filed May 26, 1999).

[27] 1998 Annual Price Cap Filing, Bell Atlantic – South. Bell Atlantic South was selected because CompTel had immediate access to this documentation.

services that would be provided using dedicated UNEs (transport and loops) are today reported in the trunking basket. For Bell Atlantic, these services represented total revenues of approximately $643 million, or approximately 22% of its interstate access revenues.[28] This percentage is relatively consistent across other RBOCs; for instance, ARMIS reports that approximately 24% of total interstates access revenues were associated with special access services in 1998.

Significantly, only a fraction of the total revenues from high capacity (including other digital data) services can be considered addressable by carriers using UNEs. CompTel reviewed nearly 2,000 lines of Bell Atlantic's 1998 annual price cap filing to identify by rate element those revenues generated through non-recurring charges, or that are subject to contractual commitments.[29] Table 2 presents the results of this analysis.

Table 2: Analyzing the Potential Addressable Market
Bell Atlantic-South (000s)

Category	Annual Revenue	Percentage
Total Revenues Analyzed	$611,785	
Revenues from NRCs	$17,143	3%
Revenues under long term contracts		
Contracts of 3 years or less	$70,902	12%
Contracts of 5 years or more	$315,816	52%
Total Revenues excluded from competition	$403,861	66%

Based on this analysis, only 7-8% of the ILECs' total interstate access revenues are even *potentially* addressable by UNEs in the near term,[30] without even beginning to consider other limitations that would make the customers' location unreachable from a CLEC facility due to economic or other factors.[31] Furthermore, special access arrangements are used for a variety of purposes, including access to local switches, to provide local area network services, and advanced data services as well. The Commission should not presume that all special access circuits would qualify as "restricted" services even today – no matter what restriction the Commission is considering. More to the point, however, the ILEC would still receive UNE rates

---

28 Detailed data is developed from Bell Atlantic-Souths' 1998 Price Cap Filing.

29 This line-by-line categorization comprised more than 95% of Bell Atlantic-South's total High Cap and DDS revenues.

30 The 7-8% estimate is calculated by recognizing that only 34% of the ILECs special access revenues (approximately 22-24% of total interstate access revenues) would be addressable in the near term.

31 *See e.g.*, EELs (even at UNE rates) impose costs on the CLEC that are avoided by the ILEC. These additional costs will make some portion of the 7% estimate too expensive to serve.

(estimated in the prior analysis to be roughly 70% of the relevant special access rate if purchased under discount plans) when UNEs are substituted for special access. By any reasonable measure, a policy of unrestricted access to UNEs would have less impact than a standard annual price cap adjustment, even assuming that 100% of the potentially addressable market shifts immediately.

An Unrestricted Extended Link Will Promote Competition

The final objection raised by the ILECs to an EEL UNE is that the network element would discourage local competition by discouraging entrants from building networks. As explained earlier, however, the EEL network element has little long term effect on a CLEC's entry choices – and, by definition, all entry decisions are long term in nature. Because the only long term cost change resulting from the EEL option is the savings in collocation costs, the EEL UNE should have little impact on the basic investment calculus involved.

In the short term, the EEL option affords CLECs a number of benefits that will accelerate competition and *position* carriers to make the long term investments necessary to compete. For instance, an EEL UNE would enable CLECs to make fuller utilization of existing investments by providing a cost effective extension of these networks to serve larger customers located at distant central offices. This incremental increase in the effective "footprint" of the CLECs network would enable the CLEC to use its own infrastructure more efficiently, as well increase its cash flow and accelerate its EBIDTA. Improvements in these financial parameters would boost investor confidence and reduce the cost to attract capital.[32]

In addition, because the EEL conserves scarce central office collocation space, additional space is made available to house those CLEC investments (such as DSLAMs) that depend upon collocation space to be operational. Freeing up central office space for these services should incrementally improve competitive conditions for advanced data services, further increasing the demand for competitive transport arrangements.

Finally, the Commission should view with skepticism the ILECs' alleged concern for their other competitors. It is useful to note that no competitive entrant supports the restrictions sought by the ILECs. It is critically important to the competitive industry that the Commission remain committed to a restriction-free UNE environment, and the ILEC's 11th hour concern for its competitors is both misplaced and misleading. In sum, CompTel strongly supports the

---

32 As the Commission is aware, EBIDTA plays an important role in the current valuation of CLEC investment.

Commission including the EEL in the list of mandatory network elements, without restriction as to the services that its members may offer using this generic transmission arrangement.

Sincerely,

Carol Ann Bischoff

Carol Ann Bischoff
Executive Vice President & General Counsel